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CONGRESSIONAL RECORD — SENATE

July 31

the offbeat, the unpopular and—often—the unheard of. Material for KRAB has to meet only two conditions: it must have inherent quality and it must, by its very nature, be unlikely to get aired by any other radio station.

The character of KRAB, both on and off the air, has been shaped by its founder, Lorenzo Milam, who also doubles as its program director, chief announcer and head politician. "If there's just one guy who thinks that certain stuff is great," says Milam, "I'll play it."

A tall, affable 30-year-old who was crippled by polio in his youth, Milam spends much of his time coaxing the right people (he hopes) into appearing on KRAB as commentators, interviewers or panelists—a role that is particularly attractive because panel members are served beer or wine while on the air. Milam makes a special point of attracting extremists. "Those wild ideas," he says, "you've got to have them to form your own opinions somewhere in between."

Perhaps the strangest thing about KRAB is that it should have sprouted and flourished here in Seattle when the original seed was sown some 3,000 miles away. That was in Jacksonville, Fla., Milam's hometown, where the young Lorenzo used to lie awake nights listening to east coast stations and imagining how he might revolutionize their programming.

Years afterward, in 1959, Milam appeared personally before the Federal Communications Commission in Washington, D.C., and proclaimed his wish to start a station. "They thought that was pretty funny," he recalls now.

His initial ploy was to launch a KRAB-type operation in Washington itself. This proved fruitless, so Milam decided to apply for a commercial license in some other city. His first choice was Seattle, which he had never visited but which, from everything he had heard, sounded like a reasonably civilized place.

The application that he filed with the FCC made three essential claims: (1) He was legally qualified to own a station ("You have to prove you are a good guy," he says); (2) he was technically qualified by virtue of owning a transmitter of 1946 vintage which had cost him \$5,000; and (3) he was financially qualified because of liquid assets exceeding \$15,000 that he had inherited from his father.

Milam mailed in his application and took off for Spain. A year later, he got the FCC's go-ahead. It was in April 1962 that Milam arrived here without fanfare to start KRAB.

The choice of call letters had partially been a fluke. The FCC required applicants to submit 10 combinations of 4 letters, listed in order of preference. Milam headed his list with KLEE ("I like his paintings") and KANT ("the philosopher; I have not read his works, but"). The FCC passed these over in favor of No. 3—KRAB. It had been included "more or less facetiously," according to Milam, but he has no regrets. "A crab can go in all directions," he points out. "In time of danger, it can scuttle under the nearest rock, and it is capable of delivering a vicious bite."

After looking over Seattle, Milam decided to locate the station in an abandoned building at 91st Northeast and Roosevelt Way, which he now rents for \$75 a month. Then he advertised in Broadcasting magazine for "an engineer to work with no pay." To his surprise, Milam got one—a teenage technical genius named Jeremy Lansman, of San Francisco, who, at 13, had run his own six-station network by making 5-watt transmitters and passing them out among his neighborhood pals—until the FCC smashed the illicit operation.

After 6 weeks of tinkering, Lansman got KRAB's ancient transmitter to perk. "Then," recalls Milam, "the bloody power

transformer started shooting blue sparks all over the place, so we took it out on the street and started beating and kicking it. That was our first live broadcast—us taking out all our aggressions on the old transformer."

Even now, KRAB has only two paid employees. One of these is Charles Howlett, an engineering student who has succeeded Lansman and earns \$25 a week as chief technician. The other is Robert Garlas, an ethnomusicologist at the university, who makes \$25 weekly as the station's music director.

All performers appear without pay, and they are a decidedly diverse group. Among KRAB's commentators have been Dr. William Halliday, a physician who favors conservation and opposes Federal medical plans; Frank Krasnowski of the Socialist Workers' (or Trotskyite) Party; Father Thomas O'Brien, a conservative who is director of the honors program at Seattle University; Donald Flynn of the John Birch Society; Dr. Frederick Exner, a radiologist and critic of fluoridation; and Deb Das, an Indian-born graduate student at the university who espouses a mystical approach to politics.

The number of subscribers now exceeds 500, which assures KRAB a monthly income of more than \$500. The station costs \$975 a month to operate. The gap is closed, more or less, through such fundraising gimmicks as concerts, cover-charge parties and outright begging. Solicitations are spearheaded by a group called Claw—the Committee to Enlighten the Airwaves—which is run by Bud Havilich and his wife, Sylvia. Havilich is a longshoreman.

But the station's best promotion is the bimonthly program guide that Milam puts together. In it he writes passionate peacocks to KRAB in a Dos Passos-esque style. To him, the transmitter has a "great smelly driving hum." The sound is therapeutic, for it means "that your scurrious words are flooding the countryside, bouncing off hills and trees, ramming headlong into cows * * * filtering into that radio, into that tiny coil of heat * * * red, deep, mysterious."

Not long ago, the program guide listed a discussion of "The Origin of the Species," which was to be followed by an "Origin of the Species Concert" blending Australian aboriginal music, Charlie Mingus and Pithecanthropus Erectus. A program of "Poems by THOMAS PELL" (written long before he went to Congress and accompanied by appropriate music) was followed several weeks later by "Poems by Mao Tse-tung" because the guide explained, "It has been claimed that our presentation of the poetry of THOMAS PELL did not give equal time to the other side."

As a clearinghouse for ideas, which makes KRAB invaluable to Seattle, the station is wide open to charges of propagandizing. However, Milam himself is entirely apolitical. "I was sort of a mushy liberal in school," he concedes, "but this station has been an eye opener. I've found there are just as many finks on the left as on the right. I'm confused. My views change from day to day. I tend to agree with the individual I'm drinking beer with. To hell with politics—I prefer Baroque music."

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. Has an order been entered to meet at 10 a.m. tomorrow?

The PRESIDING OFFICER. An order has been entered that the Senate adjourn until 10 o'clock tomorrow morning.

NOTICE OF OBJECTION TO LIMITING DEBATE ON FOREIGN AID BILL

Mr. MORSE. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. MORSE. I think, in fairness to the Senator from Montana and myself, I should say that, as I did last year, I take the position that the foreign aid bill should be discussed under the rules of the Senate, without any agreements involving any limitations fixing a time to vote or any of the other provisions that can be made by unanimous consent. But I want the Senator to know I speak in good faith when I tell him I have every intention of expediting the handling of the foreign aid bill in every possible way, consistent with adequate and full discussion of the points involved. I believe time will be saved by following that course of action.

I thought, in fairness to myself, I should make that statement, so it is understood that as we undertake consideration of the foreign aid bill this year, I shall take the position that it should be discussed under the rules of the Senate.

Mr. MANSFIELD. I thank the Senator.

AMENDMENT OF SECTION 3 OF ADMINISTRATIVE PROCEDURE ACT OF 1946

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the Senate proceed to reconsider Senate bill 1666, and that the Senate reconsider the votes by which the bill was ordered to be engrossed for a third reading, and was read the third time, and passed.

Mr. KUCHEL. Mr. President, reserving the right to object, has this matter been cleared?

Mr. HUMPHREY. Yes, it has been cleared, I assure the Senator.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 1666) to amend section 3 of the Administrative Procedure Act, chapter 324, of the act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, and for other purposes.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request to reconsider the engrossment, third reading, and passage of the bill?

The Chair hears no objection.

The bill is before the Senate.

Mr. HUMPHREY. Mr. President, on Tuesday, July 28, 1964, the Senate passed without debate S. 1666, amendments to section 3 of the Administrative Procedure Act of 1946 (60 Stat. 238). I entered subsequently a motion of reconsideration of S. 1666, and the bill returned to the calendar.

I want to make it crystal clear to every Senator that I am not opposed to S. 1666. It deals with the vital subject of access of information in Federal agencies and every Senator knows that certain agencies through the years have abused in a most flagrant manner the legitimate right to withhold certain privileged or confidential information. The time for

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a thorough revision of the statutes dealing with governmental disclosure of information is long overdue.

I did, however, believe that an opportunity should be afforded for some debate and discussion on this important bill. For this reason, and for this reason alone, I entered a motion of reconsideration.

The Senator from Minnesota is not a lawyer and not a member of the Judiciary Committee. The distinguished Senator from Missouri [Mr. Long] conducted hearings in October 1963, and again last week on this legislation. The committee approved 21 amendments to the original text of S. 1666; it is my understanding that these amendments removed a number of problems which had arisen in relation to the original bill. I commend the distinguished and able Senator from Missouri [Mr. Long] for his diligent labors to produce a fair and balanced bill.

There have been brought to my attention several areas where additional clarification would be helpful. I have prepared certain amendments which would, in my opinion, assist in clarifying these sections. It may, however, be possible to accomplish the objective of removing these potential ambiguities or uncertainties through a more complete exposition of the committee's intention without actually having to amend S. 1666.

I would, therefore, like to discuss these possible amendments with the distinguished Senator from Missouri, seek his advice and counsel on their desirability, and achieve whatever clarification he deems to be necessary.

Let me read through these proposals in their entirety.

First. On page 4, lines 19-20, strike the words, "prior to the commencement of the proceedings".

Since agencies often group cases for hearing and decision, it should not be necessary to index one of them before the others can be decided.

Second. On page 5, lines 12-14, amend clause (4) of section 3(c) to read as follows:

(4) trade secrets and information obtained from the public in confidence or customarily privileged or confidential.

The existing clause (4) of the revised section 3(c) which purports to exempt from disclosure information obtained from the public which is "customarily privileged or confidential" would not appear to exempt wage data submitted to the Bureau of Labor Statistics, and the Wage and Hour Division of the U.S. Department of Labor in confidence and used by them in preparing and publishing wage studies and surveys. This situation should be remedied because these wage studies and surveys are used by the Department as a basis for prevailing wage determinations which the Department is required to make. Unless the Bureau of Labor Statistics can continue to assure those from whom wage data are obtained that these data will be kept confidential, the Bureau's sources of information in these vital fields could be seriously jeopardized. As presently drafted, clause (4) might interfere with

the effective enforcement of the Fair Labor Standards Act, the Labor-Management Reporting and Disclosure Act, and the Welfare and Pension Plans Disclosure Act.

Third. On page 5, lines 14-15, amend clause (5) of section 3(c) to read as follows:

(5) intra-agency or interagency memoranda or letters dealing with matters of fact, law or policy.

As presently written clause (5) of the amended section 3(c) appears not to exempt intra-agency or interagency memoranda or letters dealing with matters of fact. For example, clause (5) would apparently not exempt memoranda prepared by agency employees for themselves or their superiors purporting to give their evaluation of the credibility of evidence obtained from witnesses or other sources. The knowledge that their views might be made public information would interfere with the freedom of judgment of agency employees and color their views accordingly. Memoranda summarizing facts used as a basis for recommendations for agency action would likewise appear to be excluded from the exemption contained in clause (5).

Fourth. On page 5, lines 18 to 20, amend clause (7) of section 3(c) to read as follows:

(7) investigatory files

On page 5, beginning on line 18, insert a new clause (8), as follows, and renumber the present clause (8) as clause (9):

(8) statements of agency witnesses until such witnesses are called to testify in an action or proceeding and request is timely made by a private party for the production of relevant parts of such statements for purposes of cross examination.

Clause (7) of the amended section (3) would appear to open up investigatory files to an extent that goes beyond anything required by the courts, including the decision of the Supreme Court in the Jencks case. This clause, for example, which provides for disclosure of investigatory files as soon as they "affect an action or proceeding or a private party's effective participation therein" is susceptible to the interpretation that once a complaint of unfair labor practice is filed by the General Counsel of the NLRB, access could be had to the statements of all witnesses, whether or not these statements are relied upon to support the complaint.

Witnesses would be loath to give statements if they knew that their statements were going to be made known to the parties before the hearing. While witnesses would continue to be protected in testifying at the hearing, they would enjoy no protection prior to that time. Substantial litigation would be required before the full scope and effects of clause (7) would be clear.

A pending draft report of the ABA Committee on Board Practice and Procedure states that:

In the consideration of section 102.118 of the Board's rules by last year's Committee on Board Practice and Procedure there was considerable opposition to any rule which would permit a party to engage in a fishing

expedition into the Board's investigation files. It was felt that the opening of the Board's files to inspection would seriously handicap the Board in the investigation of charges.

The committee concluded that the Board's investigatory files should be exempt from disclosure. The Board would, of course, like all other administrative agencies of the Government, continue to be governed by the rule laid down by the U.S. Supreme Court in the Jencks case.

Mr. President, I have cited these proposals and I would welcome comment from the able chairman of the committee.

Mr. LONG of Missouri. Mr. President, I thank the distinguished majority whip for bringing these matters to the attention of the Senate. I think it is very helpful to have discussions of these matters before the bill is finally passed and sent to the House.

I have listened with great interest to the suggestions made by the Senior Senator from Minnesota and would like to comment on them one by one.

First, there is a suggestion with respect to an amendment to section 3(b), eliminating the words "prior to the commencement of the proceeding." These words were added to protect private parties from being surprised in a proceeding of which they could have had no knowledge. Therefore, I believe they should be retained in the section.

The next suggestion relates to the exemption in section 3(c), relating to "trade secrets and other information obtained from the public and customarily privileged or confidential." This language in itself is quite broad and I believe would certainly cover such material as "wage data submitted to the Bureau of Labor Statistics" as mentioned by the senior Senator from Minnesota. The suggestion that we add the words "in confidence" to the phrase "information obtained from the public" might result in certain agencies taking much information from the public "in confidence" in the future that has not customarily been considered confidential or privileged. This is something which we should seek to avoid and I believe that the language in the present exemption number (4) is sufficiently broad.

The suggestion with respect to exception (5), adding "matters of fact" to "matters of law or policy" would result in a great lessening of information available to the public and to the press. Furthermore, the example cited with respect to intra-agency memorandums giving evidence of the credibility of evidence obtained from witnesses or other sources, leads me to point out that there is nothing in this bill which would override normal privileges dealing with the work product and other memorandums summarizing facts used as a basis for recommendations for agency action if those facts were otherwise available to the public.

The last two suggestions relate to investigatory files and an inclusion in the bill of the substance of the Jencks rule. I believe that this is a valuable suggestion but I would suggest as a substitute for the Senator's two proposals that we

combine them and restate exception (7) as a new proposal which would read as follows: "investigatory files compiled for law enforcement purposes except to the extent they are by law available to a private party."

If this language is agreeable to the Senator from Minnesota, I hereby move that the bill is amended accordingly.

Mr. HUMPHREY. In other words, one amendment can take care of the situation.

Mr. LONG of Missouri. Yes; one amendment.

Mr. HUMPHREY. I would be very appreciative if the Senator would do that.

Mr. LONG of Missouri. The amendment is at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 5, at lines 18 to 20, it is proposed to amend clause (7) to read as follows: "investigatory files compiled for law enforcement purposes except to the extent they are by law available to a private party."

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Missouri.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment.

Mr. HUMPHREY. I thank the Senator from Missouri for his great courtesy and his patience in this matter. I deeply regret that I found it necessary to move to reconsider the vote by which the bill had been passed. I told the Senator privately, and I now tell him publicly, that this is a very complex piece of legislation, and he has devoted hours of work to it. He is to be highly commended for his diligence and careful attention to this very important subject. We all wish to have governmental information made available; and proper public access to information, I am sure, is one of the real objectives of a free society. We must seek to strike a workable balance in this controversial area. I know that the House will wish to examine into this proposed legislation with the same diligence that the Senator and his subcommittee have given to this bill. This is a most difficult area in which to legislate and I know the House committee will examine these proposals with care and objectivity.

Mr. LONG of Missouri. I thank the distinguished Senator from Minnesota for his help. I am grateful to him. I am sure the committee is very appreciative of his help and his courtesy and interest in this matter. He has been very helpful.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (S. 1666) was passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of chapter 324 of the Act of June 11, 1946 (60 Stat. 238), is amended to read as follows:

"SEC. 3. (a) PUBLICATION IN THE FEDERAL REGISTER.—Except to the extent that there is involved (1) any function of the United States requiring secrecy for the protection of national security or (2) any matter relating solely to the internal management of an agency, every agency shall separately state and currently publish in the Federal Register for the guidance of the public (A) descriptions of its central and field organization and the established places at which, the officers from whom, and methods whereby, the public may secure information, make submittals or requests, or obtain decisions; (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available, rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; (C) substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by the agency and (D) every amendment, revision, or repeal of the foregoing. Except to the extent that he has actual notice of the terms thereof, no person shall in any manner be required to resort to, or be bound or adversely affected by any matter required to be published in the Federal Register and not published therein or in a publication incorporated by reference in the Federal Register.

"(b) AGENCY OPINIONS, ORDERS, AND RULES.—Except to the extent that matter (1) is specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy; (2) relates solely to the internal personnel rules and practices of any agency; or (3) is specifically exempted from disclosure by statute, every agency shall, in accordance with published rules, make available for public inspection and copying all final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases, and those rules, statements of policy, and interpretations which have been adopted by the agency, affect the public and are not required to be published in the Federal Register, unless such opinions, orders, rules, statements, and interpretations are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion or order; and to the extent required to protect the public interest, an agency may delete identifying details when it makes available or publishes a rule, statement of policy, or interpretation; however, in any case the justification for the deletion must be fully explained in writing. Every agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to each final order, opinion, rule, statement of policy, and interpretation of general applicability. No final order or opinion may be cited as precedent, and no opinion, rule, statement of policy, or interpretation which is issued, adopted, or promulgated after the effective date of this Act may be relied upon, used, or cited as precedent by an agency against any private party unless it has been indexed and either made available or published as provided in this subsection or unless prior to the commencement of the proceeding all private parties shall have actual notice of the terms thereof.

"(c) AGENCY RECORDS.—Every agency shall, in accordance with published rules stating the time, place, and procedure to be followed, make all its records promptly available to any person except those particular records or parts thereof which are (1) specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy; (2) relates solely to the internal personnel rules and practices of any agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and other information obtained from the public and customarily privileged or confidential; (5) intra-agency or interagency memorandums or letters dealing solely with matters of law or policy; (6) personnel files, medical files, and similar matter the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (7) investigatory files compiled for law enforcement purposes except to the extent they are by law available to a private party; and (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions. Upon complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency is situated shall have jurisdiction to enjoin the agency from further withholding, and to order the production of any agency records or information improperly withheld from the complainant by the agency and to assess against the agency the cost and reasonable attorneys' fees of the complainant. In such cases the court shall determine the matter de novo and the burden shall be upon the agency to sustain its action by a preponderance of the evidence. In the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

"(d) AGENCY PROCEEDINGS.—Every agency having more than one member shall keep a record of the final votes of each member in every agency proceeding and except to the extent required to protect the national defense or foreign policy, such record shall be available for public inspection.

"(e) LIMITATION OF EXEMPTION.—Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this section, nor shall this section be authority to withhold information from Congress.

"(f) PRIVATE PARTY.—As used in this section, 'private party' means any party other than an agency.

"(g) EFFECTIVE DATE.—This amendment shall become effective one year following the date of the enactment of this Act."

Mr. LONG of Missouri. Mr. President, I move that the Senate reconsider the vote by which the bill was passed.

Mr. HUMPHREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMITTEE MEETING DURING SESSIONS OF THE SENATE AUGUST 5 THROUGH AUGUST 7

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the Internal Security Subcommittee of the Com-